



April 27, 2018

**FREEDOM OF INFORMATION ACT REQUEST**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1301 Constitution Avenue, NW, Room 6416 West  
Washington, D.C. 20004  
Phone: (202) 566-1667

**Via FOIAonline**

Re: Disclosure of records that affect the public pertaining to the Paris Agreement, the UNFCCC, the IPCC and the Kyoto Protocol from January 20, 2017 through April 27, 2018.

Dear Environmental Protection Agency FOIA Officer:

This is a request under the Freedom of Information Act (“**FOIA**”), 5 U.S.C. § 552 *et seq.*

Oxfam America (“**Oxfam**” or “**we**”) is part of Oxfam International, an international confederation of 20 organizations working together with partners and local communities in more than 90 countries. Oxfam is submitting this request to help inform the public of the U.S. Environmental Protection Agency’s deliberations, analysis and discussion regarding withdrawal from the Paris Agreement and continued participation in the United Nations Framework Convention on Climate Change (“**UNFCCC**”).

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By this letter, Oxfam is requesting, for the period of January 20, 2017 through April 27, 2018, all Environmental Protection Agency (“**EPA**”) records <sup>1</sup>, memoranda, correspondence, electronic mail, drafts, memorandums of conversation, notes, briefing materials, reports, chits, and notes and transcripts of telephone calls and mobile text messages originated or received by:

- a. the Office of the Administrator, including but not limited to, EPA Administrator Scott Pruitt, Acting Deputy Administrator Mike Flynn, and Chief of Staff Ryan Jackson;
- b. the Office of Policy, including but not limited to, Associate Administrator Samantha Dravis, and Deputy Associate Administrator Brittany Bolen;
- c. the Office of Air and Radiation, including but not limited to, Assistant Administrator Bill Wehrum, and Deputy Assistant Administrator Amanda Gunasekara;
- d. the Office of Enforcement and Compliance Assurance, including but not limited to, Assistant Administrator Susan Bodine;
- e. the Office of International and Tribal Affairs, including but not limited to, Principal Deputy Assistant Administrator Jane Nishida;
- f. the Office of Research and Development, including but not limited to, Principal Deputy Assistant Administrator for Science Jennifer Orme-Zavaleta;
- g. the Office of Congressional and Intergovernmental Relations, including but not limited to, Associate Administrator Troy Lyons; or
- h. the Office of Homeland Security, including but not limited to, Acting Associate Administrator Ted Stanich,

mentioning or referencing any of the following subject matters and organizations:

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<sup>1</sup> As provided in 5 USC § 552(f)(2), “record” includes “(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and (B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.”

1. the Paris Agreement, Paris Accord, Paris Climate Accord, or Paris Climate Agreement;
2. the United Nations Framework Convention on Climate Change, or UNFCCC;
3. the Green Climate Fund, or Green Fund;
4. the Nationally Determined Contributions, or NDC;
5. the Kyoto Protocol;
6. the Intergovernmental Panel on Climate Change, or IPCC; or
7. any other terms or acronyms known, and/or used, by EPA to refer to the above-mentioned subject matters and organizations.

This request is not meant to be exclusive of any other records which, though not specifically requested, would have a reasonable relationship to the subject matter of this request. Furthermore, we note that FOIA is to be broadly construed in favor of disclosure.

Please provide responses on a rolling basis, as they become available.

In the event that access to any of the requested records is denied, please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. We therefore request that we be provided with all non-exempt portions which are reasonably segregable. We further request that you describe the deleted material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies in this instance.

### **Request for Waiver of Fees**

A) Pursuant to FOIA and the implementing EPA regulations, Oxfam requests that the records sought under this request be furnished without any charge since “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. §2.107(l)(1).

- **The first fee waiver requirement is met.** *Id.* §2.107(l)(2).
  - (i) The subject of the request. *Id.* §2.107(l)(2)(i).

The subject of this request concerns “the operations or activities of the government.” Withdrawing the U.S. from an agreement is a perfect example of operations or activities of the federal government, and this request indeed asks for records regarding the withdrawal of the U.S. from an agreement, namely, the Paris Agreement.

- (ii) The informative value of the information to be disclosed. *Id.* §2.107(l)(2)(ii).

Disclosure of requested records is "likely to contribute" to an understanding of government operations or activities because it will inform the public about the process leading to, and the specific data, studies, analysis and reasoning behind, the decision to withdraw from the Paris Agreement, a major agreement concerning the global fight against climate change.

Although the American people have been given some information about the reasons for withdrawing from the Paris Agreement, the readily available information does not involve specific data, reference, studies or analysis available to, or conducted by, EPA in relation with this withdrawal. Accordingly, the information to be disclosed in response to this request is currently not publicly available.

Thus, disclosure of requested records is likely to contribute to an increased public understanding of government operations or activities since it will provide new, meaningful and specific information about the agency's operations, specifically, those concerning withdrawal from the Paris Agreement.

- (iii) The contribution to an understanding of the subject by the public is likely to result from disclosure. *Id.* §2.107(l)(2)(iii).

The disclosure will contribute to “public understanding,” *i.e.*, to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.

Oxfam is a non-profit organization working to end the injustice of poverty. Its mission is to tackle the root causes of poverty. As such, it has been very active in the area of climate change, because it believes that poor communities are hardest hit by climate change. In this respect, Oxfam has published numerous articles, news, stories, evaluations, reports, and briefs

relating to climate change on its website,<sup>2</sup> its blog,<sup>3</sup> and in its magazine, Oxfam CloseUp.<sup>4</sup> Certainly, Oxfam intends to disseminate the information it will receive upon release of responsive records under this request to the public through its communication channels such as its website, blog, and magazine.

Even though climate change is a phenomenon that the majority of the American people are interested in, it may not be possible for every interested person to digest every record to be released under this request. Its expertise in the area of climate change and its editorial skills will allow Oxfam to turn this raw data into a distinct work. Accordingly, Oxfam will effectively disseminate the disclosed information so that a broad audience of persons interested in the subject can actually evaluate it.

Thus, the disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of Oxfam as the requester.

#### A representative of the news media

Pursuant to 40 C.F.R. §2.107(l)(2)(iii), it will be presumed that a representative of the news media will satisfy this consideration.

A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” And, “the term ‘news’ means information that is about current events or that would be of current interest to the public.” 5 U.S.C. §552(a)(4)(A)(ii).

In line with the definition in the FOIA, D.C. Circuit held that there were five elements that a requester must satisfy in order to qualify as a representative of the news media. It “must: (1) gather information of potential interest (2) to a segment of the public; (3) use its editorial skills to

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<sup>2</sup> <https://www.oxfamamerica.org/explore/stories/climate-change/>

<sup>3</sup> <https://politicsofpoverty.oxfamamerica.org/category/climate-change/>

<sup>4</sup> <https://www.oxfamamerica.org/explore/research-publications/oxfam-closeup-magazine/?q=climate+change>

turn the raw materials into a distinct work; and (4) distribute that work (5) to an audience.” *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1120 (D.C. Cir. 2015).

Oxfam satisfies all of these elements. It constantly gathers information regarding poverty and related issues, such as food, farming and hunger, water, women and girls, natural resources and rights, as well as climate change, which obviously are of current interest to the public. Oxfam then turns such raw information into publications<sup>5</sup> using its editorial skills, thereby publishing news, stories, reports, researches, evaluations, fact sheets, and briefs on its website<sup>6</sup> and blog.<sup>7</sup> Oxfam also issues a periodical, Oxfam CloseUp magazine,<sup>8</sup> and it has published three books.<sup>9</sup>

Thus, Oxfam is a representative of the news media, and it satisfies the consideration that disclosure must contribute to “public understanding” also in its capacity as such.

- (iv) The significance of the contribution to public understanding. 40 C.F.R. §2.107(l)(2)(iv).

The disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

As people in the United States and around the world start to experience the effects of climate change, the American people become increasingly interested in issues surrounding the climate change, including the Paris Agreement and withdrawal of the U.S. therefrom. However, the information already available in the public domain regarding the reasons for withdrawing from the Paris Agreement is limited and it does not involve specific data, reference, studies or analysis available to, or conducted by,

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<sup>5</sup> <https://policy-practice.oxfamamerica.org/publications/>

<sup>6</sup> <https://www.oxfamamerica.org/explore/stories/>

<sup>7</sup> <https://politicsofpoverty.oxfamamerica.org/>

<sup>8</sup> <https://www.oxfamamerica.org/explore/research-publications/oxfam-closeup-magazine/>

<sup>9</sup> <https://policy-practice.oxfamamerica.org/publications/books/>

EPA in relation with this withdrawal. Disclosure of records under this request will provide valuable information in this respect.

Also, upon disclosure of requested records, Oxfam will use its experience in the area of climate change and its editorial skills to effectively disseminate this valuable information to a large audience through its communication channels. Accordingly, the level of public understanding of the decision to withdraw from the Paris Agreement will be enhanced to a significant extent.

- **The second fee waiver requirement is met.** *Id.* §2.107(1)(3).

Oxfam is a 501(c)(3) non-profit organization and does not have any commercial interest that would be furthered by the requested disclosure. Oxfam's purpose in requesting this disclosure is to inform the public about the operations or activities of the government. Specifically, as explained above, Oxfam aims to contribute to public understanding of EPA's operations regarding the U.S. withdrawal from the Paris Agreement. Thus, this request is made for public interest, and the disclosure of information will provide no commercial interest to Oxfam.

- B) Alternatively, if the EPA denies the above request for a public interest waiver of fees, Oxfam requests that search and review fees be waived based on the fact that Oxfam is a representative of the news media and that Oxfam does not have any commercial interest that would be furthered by the requested disclosure, as explained above in Section A. *Id.* §2.107(c)(iii).
- C) If for some reason, the fee waiver request is denied, while reserving our right to appeal such a decision, we are willing to pay up to \$25.00 to cover costs of document searches and duplication. If you anticipate costs will exceed \$25.00, please notify Oxfam of the excess cost.

Please send the requested documents in .pdf format by email, to the attention of Heather Coleman at the below address.

Heather Coleman  
Oxfam America  
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Suite 1300  
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Access to the requested records should be granted within twenty working days from the date of your receipt. Failure to respond in a timely manner shall be viewed as a denial of this request and we may immediately file an administrative appeal. Thank you in advance for your prompt reply.

Sincerely,

/s/

Heather Coleman